

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
GREENVILLE DIVISION

CYNTHIA B. AVENS,

Plaintiff,

v.

FARIS C. DIXON, JR., District
Attorney; VIDENT/ECU HEALTH
MEDICAL CENTER DR. KAREN
KELLY, Medical Examiner;
JOHN/JANE DOE; JOHN/JANE DOE;
JOHN/JANE DOE,

Defendants.

Case No. 4:24-cv-00051-M-RN

DEFENDANTS' RENEWED MOTION TO STAY DISCOVERY

NOW COME Defendants Faris C. Dixon, District Attorney for the 3rd Prosecutorial District of the State of North Carolina (“**DA Dixon**”); VIDENT/ECU Health Medical Center (“**ECU Health**”); Karen Kelly, medical examiner (“**Dr. Kelly**”) at the Regional Autopsy Center in Greenville, North Carolina (collectively, “**Defendants**”), by and through their undersigned counsel, and renew their motion to continue the deadline for the Rule 6(f) conference and to postpone entry of a scheduling order under Rule 16(b) of the Federal Rules of Civil Procedure until after Defendant’ Motions to Dismiss have been resolved by the Court. (DE 30) In support of this Motion, Defendants show the Court as follows:

1. Plaintiff Cynthia Avens (“Plaintiff” or “Ms. Avens”) initiated this

action on March 22, 2024 against Defendants seeking redress for violations of constitutional rights. (DE 1 p. 1-2)¹

2. On May 29, DA Dixon filed his Motion to Dismiss the Complaint and Memorandum in Support (DE 24, 25) asserting the Court lacks subject matter jurisdiction over this matter and failure to state a claim upon which relief can be granted, which if granted, would protect MERS from the burdens of litigation, including the Rule 26(f) Conference and pre-trial discovery.

3. On May 29, both Defendants' Dr. Kelly and ECU Health filed their respective signed Motions to Dismiss the Complaint and Memorandums in Support (DE 22, 23, 26, 27) for failure to state a claim upon which relief can be granted, which if granted, would protect them from the burdens of litigation, including the Rule 26(f) Conference and pre-trial discovery.

4. On May 30, 2024, this Court entered an Order for Discovery Plan requiring the parties to conduct a Rule 26(f) conference by June 29, 2024. (DE 29) On June 3, 2024, Defendants' jointly moved to continue the deadline for the Rule 26(f) conference and postpone entry of a Scheduling Order until after the Court rules upon the Defendants' Motions to Dismiss. (DE 30)

5. Before the Court ruled on Defendants' joint motion, Plaintiff Avens filed an amended complaint on June 18, 2024. (DE 33)

¹ Citations to Plaintiff's Complaint will refer to the docket entry number (DE 1), page number and paragraph number, if applicable.

6. Defendants' again timely filed their respective motions to dismiss and memorandum in support of their motions Plaintiff's amended complaint. (DE 43-44, 47-50).

7. Defendants submit that good cause exists, and it would be in the best interests of the parties and judicial economy for the Court to continue the deadline for the Rule 26(f) conference and to postpone entry of a Scheduling Order pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, as well as initial disclosures and discovery, until after the Court rules upon the Defendants' Motions to Dismiss Plaintiff's Amended Complaint, including any opposition to Defendants' Motions to Dismiss Plaintiff's Amended Complaint which have been or may be filed by Plaintiff. If said Motions are granted, then this action will be dismissed thereby rendering the Rule 26(f) conference, Rule 16(b) scheduling order, initial disclosures and discovery unnecessary.

8. Plaintiff has informed counsel for Defendants that she does not consent to this Motion.

WHEREFORE, Defendants respectfully request that the Court continue the deadline for the parties to conduct a Rule 26(f) conference and postpone entry of a scheduling order under Rule 16(b), the deadline for Rule 26(a) initial disclosures, and all discovery in this action until after the Court has an opportunity to rule upon Defendants' Motions to Dismiss Plaintiff's Amended Complaint, including any opposition to Defendants' Motions to Dismiss which

have been or may be filed by Plaintiff

Respectfully submitted, this the 22nd day of July, 2024.

JOSHUA H. STEIN
Attorney General

/s/ Chris D. Agosto Carreiro
 Chris D. Agosto Carreiro
 Special Deputy Attorney General
 N.C. Department of Justice
 P.O. Box 629
 Raleigh, NC 27602
 Telephone: (919) 716-6874
 Facsimile: (919) 716-6755
 ccarreiro@ncdoj.gov
 State Bar No. 45356
Counsel for DA Dixon

/s/ Jeremy Lindsley with permission
 Jeremy D. Lindsley
 Assistant Attorney General
 NC State Bar No. 26235
 jlindsley@ncdoj.gov
 N. C. Department of Justice
 PO Box 629
 Raleigh, NC 27602
 Tel: 919-716-6920
 Fax: 919-716-6764
Counsel for Dr. Karen Kelly

/s/ Daniel D. McClurg with permission
 Daniel D. McClurg (NC Bar #53768)
 daniel.mcclurg@klgates.com
 K&L Gates LLP
 300 South Tryon Street, Suite 1000
 Charlotte, North Carolina 28202
 (704) 331-7400
 (704) 353-3114

/s/ Terrence M. McKelvey with permission
 Terrence M. McKelvey (NC Bar #47940)
 terrence.mckelvey@klgates.com
 K&L Gates LLP
 501 Commerce Street, Suite 1500
 Nashville, Tennessee 37203
 (615) 780-6700
 (615) 780-6799
*Counsel for Defendant Pitt County
 Memorial Hospital, Inc.*

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day electronically filed the **DEFENDANTS' RENEWED MOTION TO STAY DISCOVERY** using the CM/ECF system, which will send notification of such filing to all the counsel of record for the parties who participate in the CM/ECF system and addressed to the following individuals:

*Cynthia B. Avens
303 Riverside Trl.
Roanoke Rapids, NC 27870
Avens1@charter.net*

This the 22nd day of July, 2024.

/s/ Chris D. Agosto Carreiro
Chris D. Agosto Carreiro
Special Deputy Attorney General
N.C. Department of Justice